

ADMINISTRATION OF JUSTICE

671 The Ikongo had a well-developed legal system with a concept of law quite similar to our own. Most of the laws received their sanction from immemorial usage, but new ones could be enacted to meet emergencies. A new law would be formulated by the *Mpanzaka* in council with the *Anakandriana* and publicly announced by him at a special *kabary*. There seems to have been no machinery for the repeal of laws. Unpopular or antiquated ones would simply be allowed to lapse. The more important regulations were known to the entire community, but there were certain individuals who were recognized as especially conversant with the law and from whom litigants would seek advice. In trials, previous decisions were often cited, but I could not discover how binding such precedents were.

673 The distinction between civil and criminal cases was clearly
626 recognized. The former consisted of disputes over property. Apparently it was impossible to sue for damages. Criminal actions were brought for theft, murder and witchcraft. Incest, in spite of the very strong feeling against it, was not technically a crime, and neither was mayhem. Actually, deliberate murder and mayhem were so rare that informants were uncertain as to the exact procedure. Fights between sober adults were considered disgraceful to both parties and most of the natives had never witnessed one. If one person injured another by accident, or while drunk, the matter was settled informally by an apology and gift to the injured party.

692 Minor civil cases were settled by the *Fokonolona* with the village
695 chief presiding. Criminal cases and the more important civil ones, especially those involving persons from different villages, were tried before the *Anakandriana* of the gens with a number of *Notables* in attendance. All trials were public. The *Mpanzaka* ("chief") of the tribe might attend, but it was always the *Anakandriana* who gave the verdict, after consultation with the *Notables*. In cases involving persons of different gentes, the litigants would agree to accept the *Anakandriana* of one or the other gens as judge, or, if the matter was very important, refer the case to the *Anakandriambe* ("chief counselor to the king"). If the persons involved belonged to different kingdoms, the plaintiff could appeal to either king to act as judge, but that king's decision had to be generally recognized as just and impartial. If it was not, the loser would refuse to abide by it and his own king would support him, causing war between the kingdoms.

695 In civil cases it was not unusual for the litigants to be represented by counsel. Both parties were allowed to state their case and to call

GOVERNMENT

155

witnesses. These were not put on oath, but could be informally cross-examined by anyone present. The spectators took part in the trial and their attitude had considerable influence on the *Anakandriana's* decision, which was final. I was unable to learn how the awards of the court were enforced. There seems to have been no special machinery for this, the pressure of public opinion being sufficient. 695 [626]

Criminal cases dealt with theft, very rarely murder, and witchcraft. Theft was a very serious offense and the thief, if caught in the act, might be killed out of hand. Suspects were tried by the village chief and *Fokonolona*. They were not allowed representation by counsel and the proceedings seem to have been less formal and more heated than in civil cases. Witnesses were called when possible, but a thief might be convicted on circumstantial evidence alone. If found guilty he was forced to make full restitution and would usually be badly mauled by the spectators and jeered at for a long time afterward. If accused of a second or third offense, the thief would be sent to the *Anakandriana* of the gens for judgment. This official might fine him to the extent of his property, or have him beaten, or both, but apparently he could not order him sold into slavery, or officially sentence him to death. However, if the culprit died as a result of the beating no one was held responsible. A criminal might appeal from the judgment of the *Anakandriana* to that of the king, but this was not encouraged. An old offender who did so was likely to be brought in dead, with the explanation that he had tried to escape from his guards on the way. If he reached the king, the case was laid before the *Anakandriambe*, who made a thorough investigation and then submitted it to the king with a recommendation. The king's judgment was final, and if the accused appeared displeased he was fined an ox for contempt of court. This fine went to the king, as did any other fine levied by him. In most places only the king had the right to pronounce sentence of death. 681 685 695

Murder was so rare that I could learn nothing of the procedure except that the murderer would probably be sent to the king, who would sentence him to death. 682

Although the Ikongo lacked the exaggerated fear of witchcraft which is present in many African tribes, they believed that there were certain persons, called *mpamosary*, who caused illness and death by magical means. This was the most serious of all offenses, being considered the equivalent of wholesale murder. An *mpamosary* always 683 694